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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,195	09/24/2003	Priti Srivastava		2658

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EXAMINER

WILLATT, STEPHANIE L

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/669,195	<b>Applicant(s)</b> SRIVASTAVA, PRITI	
	<b>Examiner</b> Stephanie L. Willatt	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>24 September 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Milani.

Milani discloses a combined headband and ponytail retaining device (20) including a substantially cylindrical band portion (fabric band and ponytail pull-through means 30), which includes a circumference and a width. The circumference is stretchable at the elastic bands (31,32) so as to allow placement of the device around the head of a wearer. The cylindrical band portion (fabric band and ponytail pull-through means 30) incorporates an opening that is of a dimension to allow the wearer's hair to be pulled through the opening, as discussed in column 2, lines 47-56. The opening is created by an elongated slit in the material of the cylindrical band portion (fabric band and ponytail pull-through means 30) with the slit being parallel to the circumference of the cylindrical band, as shown in Figure 3. The method of claim 4 is performed by the apparatus, as discussed in column 2, lines 47-56. Note: any reference to the process of making the product is not given weight.

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3. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Huang.

Huang discloses a combined headband and ponytail retaining device including a substantially cylindrical band portion (axial member 20 when its ends are tied as shown in Figure 4), which includes a circumference and a width. The circumference is stretchable at the elastic bands (column 2, lines 35-37) so as to allow placement of the device around the head of a wearer. The cylindrical band portion (20) incorporates an opening (11) that is of a dimension to allow the wearer's hair to be pulled through the opening, as discussed in column 2, lines 55-60. The opening (11) is created by an elongated slit in the material of the cylindrical band portion (20) with the slit being parallel to the circumference of the cylindrical band, as shown in Figure 2. The method of claim 4 is performed by the apparatus, as discussed in column 2, lines 47-60. Note: any reference to the process of making the product is not given weight.

4. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirk.

Kirk discloses a combined headband and ponytail retaining device including a substantially cylindrical band portion (1), which includes a circumference and a width. The circumference is stretchable by the buckle (4) so as to allow placement of the device around the head of a wearer. The cylindrical band portion (1) incorporates an opening (between bands 1 and 2) that is of a dimension to allow the wearer's hair to be pulled through the opening (between bands 1 and 2). The opening (between bands 1 and 2) is created by attaching the two ends of a substantially rectangular band (2) of

material to two regions along the circumference of the cylindrical band portion (1), as discussed in lines 60-64 of page 1. Note: any reference to the process of making the product is not given weight.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Obergfell.

Obergfell discloses a combined headband and ponytail retaining device including a substantially cylindrical band portion (12), which includes a circumference and a width. The circumference is stretchable (column 2, lines 39-44) so as to allow placement of the device around the head of a wearer. The cylindrical band portion (12) incorporates an opening (aperture 18) that is of a dimension to allow the wearer's hair to be pulled through the opening (aperture 18), as shown in Figure 1. The device provides both an aesthetic and a utilitarian function, as discussed in column 1, lines 14-22.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Obergfell in view of Huff.

Obergfell discloses the features discussed above, but not that the band portion (12) may be worn around the user's neck. Huff discloses that a band portion (wrap 10) may be worn around the user's head (Figure 19) or around the user's neck (Figure 14) in order to decorate either the head or neck of the user (column 2, lines 34-39. It would have been obvious to one having ordinary skill in the art at the time the invention was made to put the band of Obergfell around the user's neck, as taught by Huff, in order to decorate a user's neck while providing a ponytail holder.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perry discloses a hair band with an attached loop.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
slw

  
**KEVIN SHAVER**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**